

THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

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Association Activities



Mr. John W. Davis will be the honored guest of the Association at the Annual Twelfth Night Party at the House of the Association on January 6, 1955. The celebration is sponsored by the Committee on Entertainment, of which Judge Arthur Markewich is Chairman. As in past years, an outstanding program is being arranged. In view of the large attendance anticipated, reservations should be made promptly on receipt of the announcement of the entertainment.



FINAL ROUNDS in the national moot court competition sponsored by the Young Lawyers Committee, Harman Hawkins, Chairman, will be held at the House of the Association on December 16 and 17. Winners of regional competitions held all over the United

States and participated in by over 80 law schools will take part. Presiding over the court for the final round will be Mr. Justice Felix Frankfurter.



AT THE Stated Meeting on December 14 the Deputy President of the Supreme Court of Israel, The Honorable Shneour Zalman Cheshin, will speak on "Justice in a New State." Abraham Shamos, Chairman of the Committee on the City Court of the City of New York, will offer two amendments to the By-laws.



THE COMMITTEE on Courts of Superior Jurisdiction, Stuart N. Updike, Chairman, has subcommittees considering the following topics: trial of personal injury cases; administrative procedures in the courts; discovery and inspection in state courts; calendar congestion; and proposed amendments to the federal rules of civil procedure.



R. PALMER BAKER, JR., Chairman of the Section on Taxation, has announced that the January meeting of the Section on Taxation which was originally scheduled for January 13 has been changed to January 4. The speaker, Harry J. Rudick, will discuss "Executives' Compensation."



ON JANUARY 13 Dean Erwin N. Griswold of the Harvard Law School will deliver the second in the series of lectures sponsored by the Committee on Post-Admission Legal Education, Orison S. Marden, Chairman. Dean Griswold's topic will be announced at a later date.



ON NOVEMBER 22 the Section on Corporate Law Departments, E. Nobles Lowe, Chairman, held a buffet supper and lecture. Ralph M. Carson spoke on the subject, "Privilege and the Work

Product With Respect to Corporate Law Department Files." The Chairman announced that lists of members of the Section were available upon application to the Executive Secretary of the Association.



THE PRESIDENT of the Association in October addressed the following telegram to Governor-Elect W. Averell Harriman and Senator Irving M. Ives:

"IN VIEW OF EXCESSIVE DELAY AND EXPENSE TO NEW YORK LITIGANTS AND HIGH COST OF OUR JUDICIAL SYSTEM TO TAX-PAYERS WE ASK YOU STATE YOUR POSITION ON THE FOLLOWING REFORMS COLON CENTRALIZED ADMINISTRATION OF THE COURTS STOP SIMPLIFICATION OF COURT STRUCTURE STOP SIMPLIFICATION OF COURT PROCEDURE STOP POSSIBLE IMPROVEMENTS IN THE METHODS OF SELECTING JUDGES STOP THE PUBLIC AND THE BAR DO NOT REGARD THIS AS A PARTISAN QUESTION STOP IT IS MOST IMPORTANT THAT THE PEOPLE OF THIS STATE KNOW THE VIEWS OF THE CANDIDATES FOR GOVERNOR UPON THESE ISSUES."

(s) ALLEN T. KLOTS

Governor-Elect Harriman replied by telegram as follows:

"THANK YOU FOR YOUR TELEGRAM OF OCTOBER 25. I AGREE WITH YOU THAT THE PROBLEM OF IMPROVING THE ADMINISTRATION OF JUSTICE IN OUR STATE IS ONE THAT IS OF GREAT INTEREST TO THE PUBLIC. I BELIEVE THAT WHEREVER PRACTICABLE WE MUST MOVE IN THE DIRECTION OF CENTRALIZED ADMINISTRATION OF THE COURTS AND SIMPLIFICATION OF THE COURT STRUCTURE SO AS TO CUT DOWN ON DELAYS AND SO AS TO DISTRIBUTE THE CASE LOAD ON A MORE EFFICIENT BASIS. TO THE SAME END IT IS IMPORTANT TO CONTINUE EFFORTS FOR THE SIMPLIFICATION OF COURT PROCEDURE. WITH RESPECT TO YOUR QUESTION AS TO POSSIBLE CHANGES IN THE METHODS OF SELECTING JUDGES I BELIEVE THAT CAREFUL CONSIDERATION SHOULD BE GIVEN TO THE VARIOUS PRO-

POSALS THAT HAVE BEEN MADE IN THIS FIELD. AS GOVERNOR I WILL OF COURSE SEEK THE MOST EXPERT COUNSEL UPON THESE QUESTIONS INCLUDING THAT OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AND SIMILAR ORGANIZATIONS THROUGHOUT THE STATE AND I WILL AWAIT WITH GREAT INTEREST THE REPORT OF THE DISTINGUISHED BIPARTISAN COMMISSION HEADED BY HARRISON TWEED."

(s) W. AVERELL HARRIMAN

Senator Ives responded as follows:

"Thank you for your telegram of October 25, 1954.

"The Republican Party platform pledges 'support of the work of the Commission on the Courts and efforts to modernize our court system, eliminate calendar delays, reduce costs of litigation and ensure competent, qualified judges in our courts.' I wholeheartedly endorse this pledge.

"I am proud of the part played by our State Administration in establishing the distinguished Harrison Tweed Commission, which is studying the problems of our courts and I will do everything within my power to implement its recommendations so that we may achieve a court system in New York truly worthy of the Empire State."

Sincerely yours,

(s) IRVING M. IVES



THE COMMITTEE on the Surrogates' Courts, S. Pearce Browning, Jr., Chairman, has under consideration the adequacy of present commissions of trustees and executors' commissions.



AT ITS November meeting the Special Committee on Atomic Energy, Oscar M. Ruebhausen, Chairman, discussed problems connected with the participation of the states in the development

of atomic energy. The discussion was led by Professor David F. Cavers of the Harvard University Law School.



THE COMMITTEE on Foreign Law, of which Willis L. M. Reese is Chairman, entertained as its guest at its November meeting W. V. J. Evans, the legal adviser to the Permanent Delegation of the United Kingdom to the United Nations.



THE HARRISON County Bar Association of Clarksburg, West Virginia, has purchased a replica of the bust of Mr. John W. Davis, which was recently presented to the Association and which is the work of Eleanor Platt.

The Calendar of the Association for December and January

(As of December 2, 1954)

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| December | 1 | Dinner Meeting of Committee on Copyright
Meeting of Section on Wills, Trusts and Estates
Meeting of Young Lawyers Committee |
| December | 2 | Meeting of Art Committee |
| December | 3 | Luncheon Meeting of Subcommittee of Executive Committee |
| December | 6 | Meeting of Section on Administrative Law and Procedure
Meeting of Committee on the City Court
Dinner Meeting of Committee on Federal Legislation
<i>Public Conference on Municipal Court Calendar Practice, 3 P.M.</i>
Dinner Meeting of Committee on Professional Ethics
Dinner Meeting of Committee on Real Property Law |
| December | 8 | Meeting of Committee for Defense of Constitution
Dinner Meeting of Committee to Cooperate with International Commission of Jurists
Meeting of Section on Taxation |
| December | 9 | Dinner Meeting of Special Committee on Studies and Surveys of Administration of Justice |
| December | 13 | Dinner Meeting of Executive Committee
Dinner Meeting of Committee on Medical Jurisprudence
Dinner Meeting of Committee on Municipal Affairs
Dinner Meeting of Committee on Courts of Superior Jurisdiction |
| December | 14 | <i>Stated Meeting of the Association, 8:00 P.M. Buffet Supper, 6:15 P.M.</i> |

- December 15 Meeting of Committee on Admissions
Meeting of Committee on Arbitration
Dinner Meeting of Committee on Bill of Rights
Meeting of Committee on Domestic Relations Court
Meeting of Committee on Foreign Law
Meeting of Section on Litigation
Dinner Meeting of Committee on Expert Medical
Testimony Project
Meeting of Committee on State Legislation
- December 16 National Moot Court Competition. Sponsorship
Young Lawyers Committee
- December 17 National Moot Court Competition. Sponsorship
Young Lawyers Committee
- December 20 Meeting of Section on Corporate Law Departments
Meeting of Library Committee
Dinner Meeting of Committee on Studies and Sur-
veys of Administration of Justice
- December 21 Meeting of Special Court Visitation Group
- January 3 Dinner Meeting of Committee on Professional Ethics
- January 4 Meeting of Section on Taxation
- January 5 Dinner Meeting of Executive Committee
Meeting of Section on Wills, Trusts and Estates
- January 6 *Twelfth Night Festival*. Sponsorship Entertainment
Committee
- January 10 Dinner Meeting of Committee on Federal Legislation
- January 11 Meeting of Section on Jurisprudence and Compara-
tive Law
Dinner Meeting of Committee on Insurance Law

- January 12 Dinner Meeting of Committee on Domestic Relations Court
Dinner Meeting of Committee on Courts of Superior Jurisdiction
Meeting of Section on Trade Regulation
Dinner Meeting of Committee on Trade Regulation and Trade-Marks
- January 13 *Lecture by Erwin N. Griswold, Dean, Harvard Law School, 8:00 P.M. Buffet Supper, 6:15 P.M.*
- January 17 Dinner Meeting of Committee on Bankruptcy and Corporate Reorganizations
Meeting of Section on Corporate Law Departments
Meeting of Library Committee
- January 18 *Stated Meeting of Association, 8:00 P.M. Buffet Supper, 6:15 P.M.*
- January 19 Meeting of Committee on Admissions
Meeting of Committee on Arbitration
Dinner Meeting of Committee on Bill of Rights
Meeting of Section on Corporations
Dinner Meeting of Committee on Foreign Law
Round Table Conference, 8:15 P.M. Guest to be announced.
- January 20 Luncheon Meeting of Subcommittee of Library Committee
Meeting of Section on Labor Law
- January 24 Dinner Meeting of Committee on Medical Jurisprudence
- January 25 Dinner Meeting of Committee on International Law
Meeting of Committee on State Legislation
- January 26 Meeting of New York State Bar Association Section on Antitrust Law
- January 27 Meeting of New York State Bar Association Section on Food, Drug and Cosmetic Law
- January 28 Annual Meeting of New York State Bar Association
- January 29 Annual Meeting of New York State Bar Association

Expressing The Idea— The Essentials of Oral and Written Argument

By THE HONORABLE EDWARD S. DORE

Many years ago, long before the telephone, the telegraph, and radio, there was a lighthouse about five miles out to sea off Cape Breton Island, Nova Scotia, guarding a reef that was dangerous to shipping at that point. There was another lighthouse near the shore, and connected with the shore by a causeway, which guarded another reef at the entrance to the shipping harbor.

One night in the midst of a terrible storm the outer lighthouse keeper observed a ship in distress, and he knew that unless aid was summoned swiftly, the ship would be dashed to pieces during the night on the outer reef. But at the time he had no means of communicating with the man on the shore, who was hidden in the other lighthouse as he was hidden in the tower five miles out to sea. So, all he could do was to watch the destruction of the vessel, with loss of life and loss of treasure.

Thereafter, at the first opportunity, when he went ashore he and the lighthouse keeper on the shore worked out between them a code of signals by flashes of light and black-outs of light, by means of which they could transmit to each other ideas that one wished to send and the other wished to receive.

That image of the two men in the two lighthouses is, I think, an image of the whole problem of communication between man and man. No matter how close we seem to be, no matter how close we actually are, there is no direct communication between mind and mind. You don't see my mind. I don't see your mind. Both your mind and your idea, as my mind and my idea, are invisible,

Editor's Note: After a distinguished career, Justice Dore is retiring as an Associate Justice of the Supreme Court, Appellate Division, First Department, on December 31, 1954. The paper printed here was delivered as a lecture to the Association under the sponsorship of the Committee on Post-Admission Legal Education, of which Orison S. Marden is Chairman.

just as the man in the lighthouse was invisible, and the only way that we have of communicating is the way that they decided to communicate: namely, by outer signals; in their case, flashes of light; in our case; a code that we have all agreed upon—the English language.

If there were a highly intelligent man from the Orient in the first row, with perfect hearing, he would hear every sound that was uttered and understand nothing, because he did not know the code.

And, therefore, we communicate, not as we think, directly to each other, but indirectly and by means of signs. "Sema," "sematos" from the Greek, a signal; "semata" signals; hence, semantics—words.

That is the great mystery of the art of communication; and it also suggests its difficulty: it is not a science; it is an art. And, even in the vernacular, it is not congenital. Congenitally, we can make noises, of pain or of pleasure, but congenitally we don't learn to transmit ideas, any more than the art of painting is learned by being born.

Just as in painting, sculpture, architecture, or any of the arts, the art of transmitting ideas must be learned by long years of study and then a lifetime of practice.

Now, in our profession it is perhaps more necessary than in any other profession. The basic ideas as to how it should be done are the same, whether a man is selling soap or preaching the Gospel or trying to transmit an idea to five judges on an Appellate Court, to get them to act upon it. It is an art, and therefore it is subject to the laws of all art. What are they?

In the early part of the 16th Century, a man could be seen in the southerly part of Italy at a great marble quarry looking for a flawless piece of marble. When he found it, he ordered it taken out and sent to his studio. And there it stood, a great big meaningless piece of stone. And then he started to work; not first on the stone, but first in his mind.

He decided that he would depict a man; not a man in general—there is no such thing; every man is a specific, concrete individual

man—and the one he picked out was one well known, whose achievements, whose character and intelligence were known to mankind.

And then he drew drafts of the proposed statue, and he sought to have a limiting purpose before he touched the marble. When he had formed that purpose, he began his actual work. And, by taking pieces away and adding nothing, by merely taking pieces of marble away, Michelangelo brought out of the center of that meaningless piece of stone the incomparable statue of Moses which is in the Church of St. Peter in Chains, at Rome. It is living, breathing stone, every line of it suggesting strength, physical strength, intellectual strength, spiritual strength. But that dominant result is there only because it was first in the mind of the maker before it was transferred to the stone.

I give that illustration of the art of sculpture because limitation is the first law of all art; but it is especially illustrated in sculpture which produces its results by adding nothing; but taking away, limiting more and more.

So much so is that, that in Rome in the old days, in the place where the sculptors had their studios, outside some of them you would see the sign "*sine cera*"—without wax. Why? Because, as you can see at once, if a man took too much away at any crucial place—he would only have two alternatives. An honest sculptor would destroy the whole statue and start all over again. A dishonest sculptor would add something; take a little wax, color it with the color of stone and sell it as a perfect piece of art. Of course, with time and change of temperature the flaw would appear. So, the sculptors put out the sign—"Sine cera"—and those two words are the derivation of our word "sincere"—whole, uncorrupted.

Now, the same law applies to the art of utterance in words, and it may be stated thus: Before you put a word on paper, before you utter a word orally, limit your topic in your own mind to one dominant purpose, suited to the material and suited to a particular audience.

Remember the man at the lighthouse. The first thing that

caused the invention of the code was an idea; because he had an idea—not a vague, general idea; a particular, definite limited idea that desperately needed expression to a particular audience, to get that audience to act upon it—the code of light signals was invented.

And so, with all our utterance. The thing that starts it, the thing of greatest importance, of the first magnitude, is the idea, the limited idea; the audience is second, the word is last.

For example, if a man was intending to give a speech, let us say, against Communism; it wouldn't help him a bit just to think that his purpose was to speak against Communism. This is too vague, too general a purpose. It is not limited. But if he took a look at his audience, which is the first thing everyone should do, and he saw an audience composed of political and economic elements in America, he might make it his limiting purpose to show that Soviet Communism by its basic principles and all its acts denies the possibility of co-existence with any other form of economic order. As soon as he formed that limited purpose, thoughts begin to flow, ideas and sources are suggested.

Or, he might look at the audience and find it was a religious audience in America. Then, he might make it his limited purpose to show that Soviet Communism, by its basic principles and all its practice denies religion, denies God; that it is the first political system in the world that begins with atheism as a first principle.

As soon as he has a limited purpose, ideas, suggestions, examples come, and sources are suggested. And when he gets through, the audience will have what he has: one definite idea in their minds. They will have it because the speaker had one definite idea in his mind before he started to speak.

Now, strange to say, the same thing applies to practically every case we have to argue or to brief.

Speaking from this platform over ten years ago, that great lawyer whom we all reverence, admire and love, John W. Davis, gave a talk on oral argument, and he reduced it to what he called "Ten Commandments." And his fifth commandment was: "Always go for the jugular vein." He continued: "Rufus Choate's

expression was: 'the hub of the case.'" And then he said, "More often than not, there is in every case a cardinal point around which lesser points revolve, a single fortress, which, if strongly held, will make the loss of all the other works immaterial." He then referred to a great lawyer, John G. Johnson, of Philadelphia, and stated that in Johnson's Appellate arguments he spoke always only to one point and usually not more than 20 minutes, but with compelling force. "And when he finished," says Mr. Davis, "it was difficult for his adversary to persuade the Court that there was anything else worthy to be considered in the case. This is the quintessence of the advocate's art."

It is; and I say it is the quintessence of the whole art of utterance: to have one limited, definite purpose. What does that mean in the concrete? It means to think before you talk. It means to define in your own mind, to delimit in your own mind the one particular, dominant idea that you wish to transmit to others.

Don't forget that "define" comes from "definire," and "finire" contains "fines," which means boundaries, limits.

That is the first thought to have in writing a speech, in making an argument. I suggest that you write the purpose out, because writing makes an exact man, as Bacon said; e.g., purpose: To show what you aim to be the one dominant, controlling idea that you wish to transmit to your audience. Put it up before you like a bull's-eye.

And when, by thought, by discussion, by reading, you have sufficiently limited the purpose and thus written it out, you apply the second law of art: the law of selection:—*Select* specific material suited to the limited purpose and the particular audience.

Now, mind you, so far I have said nothing about words at all. We are dealing solely with ideas.

I suggest that, in gathering ideas, you use small slips of paper of uniform size, such as these I hold before you. Don't think, at this part of your preparation, of the *order* in which you are going to present your thought, or of the words that you are going to use. Ideas come to us, usually, in most amazing disorder. Jot them down as they occur. And think only of one thing: does that

case, does that thought, does that example, does that idea suit my limited purpose? Does it shoot right at the bull's-eye I have before me? If it does, throw it into an envelope; if it does not, reject it entirely. And so you gather, gradually, as you would a pack of cards, a number of notes. And when you have enough of them, you apply the third law of art: arrangement.

A hundred years ago if you went to a quarry in Tuckahoe, you would have seen a pile of cut stone, just heaps of meaningless cut stone. Today, if you go to 50th Street and Fifth Avenue, you will see the same cut stone arranged in a definite order in St. Patrick's Cathedral to achieve a limited purpose. There are the two great spires pointing upward. There are all the small, little needles and flèches of stone, all pointing upward. You can't look at them without raising your eyes and your head. That arrangement suggests a spiritual aspiration. That is the limited purpose of the building. And it is achieved by stone, which is one of the heaviest and the most material forms of matter. But it is achieved by the form in which the stone is arranged, in the form of spires, in the form of points, that lift the mind as they lift the eye heavenward.

The same law applies to expressing ideas in words. You have *limited* your purpose. You have *selected* specific material suited to your purpose. You now *arrange* that material in one definite order. The order depends upon the material, the dominant purpose and the particular audience. The most common order is the order of time. Or, you may follow the order of analysis. Or, you may follow the order of importance:—Begin with things that deserve distinction; end with things that deserve distinction.

And make an outline, a skeleton outline, to force you to see for yourself the order in which you are going to present your ideas. Now, I will suggest to you the form of outline on the blackboard. It is an outline of what I have attempted to say so far.

But, instead of using the abstract words "introduction," "body," "conclusion," which don't help the author at all—and we are looking at all of this from the point of view of the author, the maker, the writer, the man in the agony of composition—I

suggest that, instead of the "introduction," use the words "Take hold." Immediately you think of your audience; what type of people are they; where are they with respect to your idea; what will you begin with that will challenge them and alert them and hold their attention?

And I suggest always, when you are making an address, as distinguished from an argument in court, that you begin with a picture, with an image, with a story. I don't care how deep or profound your subject is, if you start with a picture, an image, or a story that fits the subject, you already have an entrance to the minds of the audience. You are talking to minds, but they are minds that are incarnate.

No one who understands scholastic philosophy would say it lessens the importance of the intellect, reason and will. And yet, one of the first theses of scholastic philosophy is:—"There is nothing in the intellect that was not first in the senses"—"*Nihil est intellectu quod non fuerit prius in sensu*"—not in the same form, of course, but coming through the senses.

And since you are talking to minds incarnate, make your words so by a picture or an image. Begin with a picture or an image; not any picture or any image; but one that suits the particular dominant purpose.

Now, at the outset I told you the story of the men in the two lighthouses because I think it illustrates the problem of utterance between man and man. It removes from us the delusion that we ever talk directly from mind to mind. It makes us realize that, as those men in the lighthouses had to use outward signals, so do we use outward signals—words; semantics—to transmit our ideas to other minds.

I therefore suggest "Take Hold" instead of "Introduction," "Transmit" instead of "Body" and "Drive Home" instead of "Conclusion." And I suggest this form of skeleton outline with Roman numerals for main headings, Arabic numerals for sub-headings, and "a," "b," and "c" for sub-subheadings; all in hanging or indented paragraphs—so that the main things stand out clearly, and you will probably never use more than three or four

main headings. If you attempt to make impressions with more than that, you will make impressions of nothing.

Therefore I suggest this form of skeleton outline: Take hold; transmit; drive home.

And I give that only because unless we force ourselves to write down our own outline, the order in which we are going to present our ideas to the audience, we shall be vague and if we are vague, the audience is bound to get a vague impression.

Now, thus far, in everything that I have said, I have been talking about *ideas*, not words. That doesn't mean that words are unimportant. Words are tremendously important because, as I said in my "image," in that symbol, in that story, it is only by these words, these outer signs, these signals, that we transmit our invisible ideas from our invisible minds to other invisible minds.

But now we must come to words, and that is the fourth suggestion I make: write and revise. And the basic law of art with regard to words is the same as with regard to everything else: be specific. A few suggestions perhaps may help, and the first one is a translation of "be specific." (1) Prefer the concrete, specific word to the general and the abstract word. What is the use of referring, in an argument, to "The Appellant," and "The Respondent"? There is always an appellant in an Appellate Court and there is always a respondent. The words are too vague. They don't throw any light on the specific relation of the parties.

How much better to begin as follows: "Plaintiff, landlord, appeals from judgment in favor of defendant, tenant, after a trial before the Court without a jury in an action for rent." There is the whole story. And, as soon as you say "landlord" and "tenant," instead of "Appellant" and "Respondent" you show the relationship of the parties. And don't forget we have Appellant-Respondent and Respondent-Appellant and three or four other variations. It is all right to use such technical terms in the headings, but don't use them in the argument, don't exclusively use them in the brief, and don't use similar abstractions in legal documents.

I wish we could pronounce a final anathema now, on the following awful abstractions in legal documents: "The party of the first part," "the party of the second part," and sometimes the "third part," and sometimes the "fifth part." And the weary reader turns back to the first page to see if somehow he can manage to find out what you are talking about.

Be specific, be concrete: "John Jones, *landlord*, hereby agrees with Thomas Smith, *tenant*, as follows:" That's all you need: colon, dash, Arabic 1, 2, 3, 4, or 5, whatever number of specific agreements you have. You designate the parties by their real relationship.

It may not be landlord and tenant; it may be employer and employee; husband and wife; principal and agent. Whatever their specific relation is, reveal that in the first sentence of the argument, and retain that designation throughout the argument, throughout the brief and throughout the legal document.

(2) Another suggestion will be helpful: avoid jargon and legal mumbo-jumbo. Now, every science, every profession has its own jargon. But I think, even with shy and bashful modesty, that we of the legal profession have to admit that we are notorious for legal mumbo-jumbo or legal jargon.

Listen to this indictment and see if you can find out what the man is trying to say. I have no doubt he went to high school. I'm sure he went to college, and he must have gone to law school because he was a lawyer and a District Attorney. And this is what he says:

"With force and arms, in and upon one John Blank, in the peace of said people, then and there being willfully, feloniously and of his malice aforethought, did make an assault with a certain pistol"—you will notice he is not worried about the English language—"loaded with gunpowder and one metal bullet, which said pistol the said defendant"—God forbid you should think it was some other defendant—"in his right hand, then and there had and held"—it wouldn't do to say "held"; it had to be "had and held"—"to at and against and upon the said," etc., etc., etc.

I'll read no more. The man is under the conviction that when

it comes to drawing up a legal document—and that's a very important one—you are not bound to reason, you are not bound to use the English language; you should use legal mumbo-jumbo.

Now, what was he trying to say? He was just trying to say that the defendant on the second of January, 1954, with a pistol deliberately shot and killed John Blank. Well, why not say it and be done with it.

I regret to announce that this litany of horrors could be multiplied indefinitely. But I'll just give you one more:

"I, John Jones, of the City of Blank, County of Blank, State of Blank, being of sound mind and disposing memory, and not acting under any fraud, duress, or any undue influence of any person whatsoever, do make, publish and declare this my Last Will and Testament, in the following manner, to wit, as follows"—

In English, if he used the English language, he would say:

"I, John Jones, hereby make my will." All the protestations against undue influence, or lack of disposing mind, if they in fact existed, won't help. In fact, it's unwise to make such reference, because you almost suggest the worst. One wit has expressed it as follows:

"Law is law: in such and so forth, whereas and whenas, wherefore and therefore, provided always, nevertheless, notwithstanding, and of course, because"—

Now, that man was satirizing what some of us do. I rejoice to say only some of us. And, strange to say, it is a perversion of the legal conscience. We want to make it "legal." So we make it what? Often illiterate.

One wag has expressed it as follows:

"We do not write in verse or prose.

"We simply lay our words in rows.

"The self-same words that Webster penned

"We merely lay them end to end."

That happens, if you *begin* with words. That is why from the beginning I said the first principle of all the art of utterance is

limitation of the idea in your own mind first. If you begin with words, you deserve the comment the Great Bard uttered:—

"Words, M'Lord, Words."

Or what he said of another worthy speaker:

"He hath been to a great feast of language and stolen the scraps."

Now, I could multiply the examples but I have to have regard for your patience and your time.

(3) I do wish to mention one more fault to be avoided: Avoid the "that" disease. What is the "that" disease? It springs from the affidavits:

"John Jones, being duly sworn,"—they usually add: "deposes and says."

And, by the way, what does "deposes" mean? It means states "under oath." But haven't you just said "being duly sworn," and don't you follow with the word "says"? Why add "deposes"?

"John Jones, being duly sworn, says: No. 1, that"—for a whole page. For a whole page? For 30 pages sometimes and, all "that clauses," beginning with a capital letter and ending with a period. But they are not sentences; they are dependent clauses, "that" clauses.

Now, in modern English, to use a "that" clause, a dependent clause with no main clause in the same sentence, is illiterate. Nobody should be graduated from grammar school who would do that, because he doesn't know the difference between a sentence and a battleship.

However, having started the "that" disease with the affidavits, to make things "legal" many lawyers tend to extend it to other documents. I read, last spring, a complaint of 30 printed pages, every alleged sentence a dependent clause, beginning with a "That" at the head of it and a period at the end.

Of course, such form interferes with understanding; and I will tell you how it hurts us in the Appellate Division, in the First Department, at least, seriously. They have what they call

"sea lawyers" in all the State prisons. These are gentlemen with plenty of time. They get law books, they read them and they see the lawyers putting in the "That," and they too want to make their briefs legal. As a result we have to read 20, 30, 40, 60, or more pages of typewritten briefs, every one of the alleged sentences dependent clauses beginning with "That."

That is the "that" disease. I regret to announce it is widespread at the Bar.

But, on the other hand we have at this Bar some of the greatest lawyers in the country, perhaps in the world, and their briefs and their affidavits are well nigh perfect, so far as the English language is concerned. They are utterly devoid of legal mumbo-jumbo, jargon, and the "that" disease.

Now, notice all I have said (1) limit your topic to one dominant aim; (2) select specific material suited solely to that aim; (3) arrange the specific material in a definite order and outline.

Then only you come to words and this is the fourth suggestion! (4) Write and revise. Now, you may either write *in extenso*, as you do in a brief, but in oral presentation, the paper always comes between you and the audience. It is preferable to memorize the sequence of the ideas, rather than the sequence of the words, to make a skeleton outline such as I have placed before you and to talk from the notes rather than to read the argument.

And, while I am speaking of words, please do not think I underestimate their importance. They are tremendously important. They are the main things by which we transmit our ideas, they are the external signs by which we send our ideas to other invisible minds. But note that in every example that I gave in which there was a mistake in the word, you will see at once that it stemmed from the failure to *think* before the word was uttered, the failure to define clearly in the writer's own mind what precisely he meant to say. Do you mean to say that a man would draw up an indictment such as the one I read, if he were not under the illusion that he had to make it "legal" by making it mumbo-jumbo or jargonesque?

Now, what is "jargon"? "Jargon" may be defined as the illegitimate child of indolence and timidity: indolence: unwilling-

ness to think before you use the word; timidity: unwillingness to say directly what you are talking about, but using circumlocution, like the man who recently said in a brief: "With regard to the situation presented, if your Honors please, it may be said the Trial Court totally misunderstood plaintiff's contention." As soon as you see a circumlocution—"With regard to," "In the case of,"—beware of it. Beware of it in your own style. Beware of it in anybody else's style, because the writer may be unconsciously slipping into jargon.

The clerk wrote: "In the case of John Jones, deceased, his coffin was ordinary." Now, if John Jones' body was in a coffin, he must have been deceased; if his body was in a coffin, does it also have to be in a "case"? What he is trying to say is, "John Jones' coffin was ordinary." Why not say it without the circumlocution? And, note the passive voice: "It may be said." I say unto you, avoid the passive voice except in cases where it is absolutely necessary; and it seldom is. If you are trying to say that John Jones was brought home in an intoxicated condition, I think the passive voice must be used for there is nothing he could do in the active voice. However, why say "in an intoxicated condition"? That's an abstraction. Why use the vague verb, "was brought"? Why not say, plainly, "John Jones was carried home drunk"? Then you have avoided jargon.

However, as I said before, I cannot underestimate the importance of words. They are the material, they are the means of transporting our ideas. Where do you get them? Normally, there is only one way and that is my last suggestion: by reading the great books. (5) Read the great books for a lifetime. The authors are the men that had the greatest power of utterance in the history of our race. What they said was said so well, both in substance and form, that the human race has refused to let it die, and it has lived on. And it is by reading the great books that we learn the appropriate word.

But, as I will intimate later, we learn much more. As to reading I can make only a few suggestions:

First, read the Bible, Old and New Testament. Remember, what so many of us forget, that both the Old and the New Testa-

ment are filled with graphic narratives told with such definite words that they challenge and hold the mind.

Take the parables of the Divine Founder of Christianity; all are stories, and He didn't begin by saying, "I am going to tell you a story that will illustrate a moral." He began with the story directly: "A man went down from Jerusalem to Jericho and fell among thieves." Immediately you say, what happened next?

So, I recommend the reading of the Scriptures, for that reason alone, although there are many higher reasons.

Secondly, I recommend the reading of the classics, the Greek and Roman classics, if not in the original—though, of course, that's preferable—then in translation; and they are great even in translation. You remember what Keats, who knew no Greek, wrote when he first opened Chapman's translation of Homer. This is what he said:

"Then felt I like some watcher of the skies
"When a new planet swims into his ken;
"Or like stout Cortez when with eagle eyes
"He star'd at the Pacific—and all his men
"Look'd at each other with a wild surmise—
"Silent, upon a peak in Darien."

The classics are great even in translation. And the translations I recommend to you are the Loeb Classics. Most of you are familiar with them.

Who was Loeb? Loeb was the son of Solomon Loeb, the founder of Kuhn Loeb & Company, the private bankers in Wall Street. Enormously wealthy by inheritance and by acquisition, when he was 34 years old, about fifty years ago, he said to himself, "What am I doing in life? I have already more money than I can use. Am I going to spend thirty more years adding to it?" He didn't. He sold out. He went to England. He looked around to see what a man with his money could do for the human race. Mr. Loeb was a learned and wise man and he saw clearly fifty years ago that the tendency to throw over the Greek and Latin classics was profoundly wrong for us of the West; he realized that whether

men knew it or not culturally we derive from those great classical sources; that we live on them in literature, in law, in rhetoric, in poetry, in art, in all the humanities, in the studies that make men more human. And, therefore, he determined in an effort to resist that movement away from the classics, to give an enormous portion of his large fortune as a foundation for an encyclical translation of all the Greek and Latin classics in what is known as the "Loeb Classical Library." There are now over 300 numbers—of the whole of the Latin and Greek Classics, with a good original text on the left hand page in Latin or Greek and a good English translation on the right hand page. And some of you who are quite convinced at least that those two languages existed, may find that you will refresh your soul occasionally by looking at the original text on the left.

But, at all events, read the Classics; read them in Loeb's Classical Library, the books are inexpensive if they are small; they can be carried in a pocket, carried in a train or on a journey.

Next, I recommend that you saturate your minds with Chaucer, Shakespeare and Milton.

Out of reverence for your time and your patience—which is almost infinite, I see,—I will defer any illustration but one. You remember how Chaucer described a lawyer who was on his way to Canterbury to visit the Blissful Martyr's Shrine? This is what he said in one line: "No busier man there was then he, and yet he seemed busier than he was." How true that is in the middle of the 20th Century, as it was in the 15th Century.

If your patience could stand it, I could give you a dozen more examples from Shakespeare, a dozen from Milton.

I recommend that you reread *Paradise Lost* once every two years at least. It will keep alive in you the sense of the sublime, and your mind will wonder with delight at the perfect diction, the absolutely perfect selection of the word and the phrase that brings the image before your mind.

Next, remember, the modern English sentence was not invented until the 18th Century. The 16th and 17th Centuries, for the most part, are hard-going in English prose. Read the makers

of the modern English sentence. Read Dryden, Pope, Sam Johnson, Addison, and Edmund Burke.

In the 19th Century, reread the masters of English prose who took the improvements of the 18th and made them still more perfect English prose: Newman, Arnold, Pater, Ruskin and the rest.

I am really inviting you to a feast of reason, to what Horace called "The Delights of Letters, the Nights and the Banquets of the Gods."

All I have tried to say can be reduced to five words. Limit, select, arrange, write, read. Now, the last two have to do with words. But, the method that I am attempting to suggest or barely to outline in the necessarily limited time that I have can be reduced to three words: limit, select, arrange. And the greatest of these is "Limit."

(1) Limit your topic to one definite, dominant purpose before you put a word on paper. Suit the purpose to the topic and to the particular audience that you aim at.

(2) Select specific material suited to the dominant purpose and the particular audience.

(3) Arrange the selected material in a definite order, and make an outline to compel yourself to see the order.

If you do those three things, no one of which has anything to do with words, you will follow the basic laws of utterance.

And then only you come to words.

(4) Write and revise; and finally

(5) Read the great books in order to get words, the best words, the most appropriate words.

Now, I must realize how inadequate, necessarily, it is to present the philosophy of utterance in one lecture and attempt to suggest a method. But, if I have violated some of my rules, I ask you to remember that profound paradox of Gilbert Chesterton: "Only the sinner can preach."

But I have attempted the impossible, deliberately because I was doing it under the auspices of this great Committee and only to spark this Committee into subsequent meetings, conferences,

seminars, to meet the desperate need for our Bar in training lawyers in the art of oral and written utterance, transmitting ideas to others, in the use of the English language instead of legal mumbo-jumbo in oral arguments, in briefs, in affidavits, even in legal documents and in the absolute avoidance of legal jargon.

I think the purpose of this Committee and this its ultimate aim, are more important than any law reform that was ever suggested or invented.

I end, as I began. Each of us, before we start to utter a word, is like the man in the outer lighthouse. As he was, sealed up in a tower of stone that concealed him and his mind, so each of us is sealed up in a tower of a material body and no man directly sees what is in our minds. As he was able to send a message only by an outer sign or signal, so, the only way we transmit ideas to other men is by outer signs and signals: by semantics, words.

In suggesting that you read the great books, to get words, I suggest that they will do more than bring you words. Read them, not merely to get the words—though that's the chief way you ever will get them—but read them to inform your own mind, to elevate your mind. The great French stylist, said: "Style is the man himself." It is true. And, how can you improve the style unless you improve the man?

Therefore, the reading of the great books to supplement our lack of concrete language is a great opportunity in life. It opens before us the whole panorama of human existence as recorded in the great books. By the magic of the printed word, we can associate for the rest of our lives with the greatest minds that ever lived, with the finest intellects, with the minds who had the finest power of utterance, whose power of utterance was so great that the human race has never permitted what they said to die.

Limit! Select! Arrange! And the greatest of these is "Limit."

The Library

SIDNEY B. HILL, *Librarian*

REVISION OF THE UNITED NATIONS CHARTER

"Being is naturally antecedent to unity, and unity to goodness; that which has completest being has completest unity and completest goodness."

DANTE

"I believe that in the long run the only way to establish peace is to write a law, agreed to by each of the nations to govern the relations of such nations with each other and to obtain the covenant of all such nations that they will abide by that law and by decisions made thereunder."

ROBERT A. TAFT

Under Article 109 of the United Nations Charter, a question of holding a conference to "review" the Charter must be considered.

We have had nine years under the Charter, amplified by custom and precedent, trial and error. This period, similar to the days under the Articles of Confederation, is being studied in preparation for the possible conference in 1955.

The United States Senate Committee on Foreign Relations has held extensive hearings on the subject and staff studies have been issued.

The adherents of the Bricker proposal who have supported the constitutional amendment affecting the treaty making power under the Constitution are rededicating themselves to a renewal of their cause.

Numerous groups, such as the League of Women Voters, New England Women, and the Daughters of the American Revolution have been making a study of co-national and international existence under the international organization.

A program to work for State's rights and "enlightened nationalism" and to oppose Communism and "super-internationalism" has been announced by the newly organized "Committee for America."

All groups regardless of political philosophy should work to prevent the destruction of civilization by atomic catastrophe. For aid in the study of amending the Charter of the United Nations the following list is offered:

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